

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.16376 of 2016

Date of decision : 17.02.2023

Charanjit Kaur

....Petitioner

Versus

Punjab State Agricultural Marketing Board and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Akshay K. Goel, Advocate
for the petitioner.

Mr. Paramjit Batta, Advocate
for the respondents

PANKAJ JAIN, J. (ORAL)

Petitioner is aggrieved of the order dated 13th of August, 2015 passed by respondent No.1 to the extent that the promotion accorded to the petitioner has been ordered to be notionally and she has been denied the claim for wages for the period starting from 18th of January, 2011 to 25th of June, 2014. Further challenge is to order dated 5th of October, 2015 (Annexure P-8) wherein the arrears of the salary consequential to upgradation of pay-scale of the petitioner has been kept limited up to 25th of June, 2014 only in light of Annexure P-6.

2. Petitioner was working as Deputy Legal Advisor with the respondent-Board when she was suspended on 28th of June, 2009. On 18th of August, 2009 she was reinstated without prejudice to the

pendency of inquiry as the petitioner was served with chargesheet on 13th of October, 2009. Inquiry was conducted. The petitioner was served with the supplementary chargesheet on 10th of March, 2011 and thereafter was fully exonerated vide inquiry report dated 24th of January, 2012. The Punishing Authority being not satisfied with the inquiry report ordered for *de novo* inquiry on 13th of June, 2012. The petitioner approached writ Court by way of CWP No.1386 of 2013. During the pendency of the said writ petition, respondents opted to withdraw the order of *de novo* inquiry on 7th of March, 2013. Resultantly, writ petition was disposed off as having been rendered infructuous vide order dated 1st of August, 2013 in the following terms :-

“Short reply by way of affidavit of Sh.Daljit Singh, ADA (Admn), Punjab Mandi Board, Chandigarh has been filed in the Court today and the same is taken on record. A copy thereof has been supplied to the counsel opposite.

Learned counsel for the respondents states that the order by which *de novo* inquiry was initiated against the petitioner has since been withdrawn.

This satisfies learned counsel for the petitioner who states that in view of above, instant petition has been rendered infructuous and the same may be disposed of as such.

Ordered accordingly.”

3. DPC was conducted and the petitioner was recommended to be promoted. On the recommendations so made, the petitioner was

ordered to be promoted vide order dated 25th of June, 2014. The same was superseded by order dated 14th of August, 2015 whereby the petitioner was ordered to be notionally promoted w.e.f. 18th of January, 2011 instead of 25th of June, 2014. Petitioner represented to the Board for upgradation of the post of Legal Advisor. The same was acceded to vide order dated 27th of August, 2015 and the pay scale admissible to the post was upgraded to that being drawn by District Mandi Officer i.e. 15600-39100 + 7600/- Grade Pay. However, the arrears payable to the petitioner were in the light of Annexure P-6 ordered to be paid post 24th of June, 2014 and were denied for the time period *ante* 24th of June, 2014.

4. Ld. Counsel for the petitioner emphatically contends that order dated 14th of August, 2015 whereby the promotion granted to the petitioner has been ordered to be notional for the period commencing from 18th of January, 2011 till 25th of June, 2014 cannot be sustained. It has been contended that it is admitted by the authorities that the petitioner became eligible to be promoted on 18th of January, 2011. However, the promotion could not be effectuated for the reason that disciplinary proceedings were pending against the petitioner, in such circumstances as held in **Union of India vs. K.V. Jankiraman, (1991) 4 SCC 109**, the authorities ought to have resorted to sealed envelop.

Once the petitioner was exonerated she would have been entitled for

all salary for the said period. He further submits that there is no reason recorded in the order dated 14th of August, 2014 to deny those backwages to the petitioner for the period commencing from 18th of January, 2011 till 25th of June, 2014 and, thus, the order cannot be sustained.

5. Per contra, counsel for the respondents submits that the petitioner being under cloud owing to serious charges levelled against her was not eligible for promotion. Further for the period commencing from 18th of January, 2011 till 25th of June, 2014, the petitioner never worked on the promotional post and resultantly she was not entitled for salary thereof. He claims that the issue w.r.t. claim over the salary for such period has been deliberated upon by Apex Court in the case of **Airport Authority of India vs. S.K. Verma, 2006(130) DLT 594**. Apex Court after considering **K.V. Jankiraman's case** (supra), Apex Court held that the trend of granting full back wages to an employee, who remained out of service during disciplinary proceedings on his exoneration has changed and the Court has to weigh the pros and cons of each case and take a pragmatic view.

6. I have heard counsel for the parties and have gone through the records of the case.

7. Facts are not much in dispute being borne from the record itself. In the considered opinion of this Court, the question is that

'Once the authorities themselves have found the petitioner entitled for promotion w.e.f. 19th of January, 2011 can the salary thereafter be denied to the petitioner on the ground that the chargesheet was pending against her?'

8. In the case of **Union of India vs. K.V. Jankiraman** *ibid* the Apex Court held as under :-

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the

allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows:

- "(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;
- (2)
- (3)
- (4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before;"

17. There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion no. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge-memo/charge-sheet has already been issued to the employee. Thus read, there is no inconsistency in the two conclusions."

9. The precise question regarding claim of an employee to monetary benefits where he has been found to be entitled to

retrospective promotion came for consideration of Apex Court in **CA No.3041/2010** titled as '**State of U.P. and others vs. B.B.S. Rathore**' decided on 24th of July, 2014 wherein it was held that :

“The question of payment of salary on notional promotion was considered by this Court from time to time. In *State of Haryana & Ors. Vs. O.P.Gupta & Ors.*, (1996) 7 SCC 533, the Court observed and held as follows:

"6. Having regard to the above contentions, the question arises: whether the respondents are entitled to the arrears of salary? It is seen that their entitlement to work arises only when they are promoted in accordance with the Rules. Preparation of the seniority list under Rule 9 is a condition precedent for consideration and then to pass an order of promotion and posting to follow. Until that exercise is done, the respondents cannot be posted in the promotional posts. Therefore, their contention that though they were willing to work, they were not given the work after posting them in promotional posts has no legal foundation. The rival parties had agitated their right to seniority. Ultimately, this Court had directed the appellant to prepare the seniority list strictly in accordance with Rule 9 untrammelled by any other inconsistent observation of the Court or the instructions issued in contravention thereof. Since the order had become final in 1990, when the appeal had been disposed of by the Court by the above directions, the State in compliance thereof prepared the seniority list in accordance with the Rules and those directions and promotions were given to all eligible persons and postings were made accordingly on December 1, 1992. In the interregnum some had retired. As stated earlier, though the deemed date has been given as 1.1.1983, the respondents cannot legitimately claim to have worked in those posts for claiming arrears and, as a

fact, they did not work even on ad hoc basis.

7. This Court in Paluru Ramakrishnaiah & Ors. vs. Union of India & Anr. [(1989) 2 SCC 541, at P. 556, para 19] considered the direction issued by the High Court and upheld that there has to be "no pay for no work" a person will not be entitled to any pay and allowance during the period for which he did not perform the duties of higher post, although after due consideration, he was given a proper place in the gradation list having been deemed to be promoted to the higher post with effect from the date his junior was promoted. He will be entitled only to step up the scale of pay retrospectively from the deemed date but is not entitled to the payment of arrears of the salary. The same ratio was reiterated in Virender Kumar, G.M.N. Rlys. vs. Avinash Chandra Chadha [(1990) 3 SCC 472 at p. 482, para 16]

8. It is true, as pointed out by Sri Hooda, that in Union of India vs. K.V. Jankiraman [AIR 1991 SC 2010] this Court had held that where the incumbent was willing to work but was denied the opportunity to work for no fault of him, he is entitled to the payment of arrears of salary. That is a case where the respondent was kept under suspension during departmental enquiry and sealed cover procedure was adopted because of the pendency of the criminal case. When the criminal case ended in his favour and departmental proceedings were held to be invalid, this Court held that he was entitled to the arrears of salary. That ratio has no application to the cases where the claims for promotion are to be considered in accordance with the rules and the promotions are to be made pursuant thereto."

Thereafter, the said issue was considered by three Judges Bench of this Court in A.K.Soumini Vs. State Bank of Travancore & Anr., (2003) 7 SCC 238. In this said case, this Court held :

"8. In State of Haryana & Others vs. O.P. Gupta & Others [1996(7) SCC 533], this Court had an occasion to deal with a claim for arrears, in a case where in adjudicating a dispute relating to seniority this Court directed the department concerned to prepare a fresh seniority list strictly in accordance with rules ignoring inconsistent administrative instructions and in compliance thereof a fresh seniority list came to be prepared and eligible persons were even given notional promotion by the department from a deemed date. When such promotees claimed for payment of arrears of salary as well, this Court rejected the claim applying the principle of 'No work, No pay' and set aside the orders of the High Court, countenancing such claims, to be illegal for the reason that the promotees did not work for the period in the promoted capacities. In coming to such conclusions this Court followed the earlier decisions reported in Paluru Ramakrishnaiah vs. Union of India, (1989) 2 SCC 541 and Virender Kumar, G.M., N. Rlys. Vs. Avinash Chandra Chadha. [(1990) 3 SCC 472]

9. So far as the case on hand is concerned, the appellant was denied promotion in terms of the promotion policy under which it was necessary for a candidate to secure at least a minimum eligibility mark of 6 1/2 at the interview and the learned Single Judge, allowed the claim only on the ground that such prescription of a minimum mark was not valid. Though, the Division Bench also affirmed the same, this Court overruled the said decision and upheld such prescription. But taking into account the pendency of the appeal in this Court for considerable time, and on account of which the appellant also did not appear in the subsequent tests, benefit to promote her was not denied. The fact that her non-promotion was legal and there has been no unlawful interference with her right to promotion

or to serve in the promoted category was obvious and could not be minced over or completely ignored in the light of the judgment of this Court, allowing the appeal by the Bank. While that be the position, the grant of relief to her, keeping in view the delay merely due to pendency of proceedings before court, was more in the nature of a gesture of gratis and not by way of any right, to which she was found to be entitled to. Consequently, the notional promotion given to her by the Bank with suitable revision of her pay scales itself is more than sufficient to meet the requirements, be it either in law or in equity. The further claim for payment of arrears as well, is far fetched and can have no basis in law. The Division Bench, in our view, properly approached the question in the light of the relevant guiding principles and the same could not be said to be either arbitrary, unreasonable or unsound in law to warrant of our interference.

In case of Union of India Vs. B.M.Jha (2007) 11 SCC 632, this Court took a similar view which is as follows:

"5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent normally he is entitled to all benefits flowing therefrom. However, this Court in the case of State of Haryana & Ors. v. D.P. Gupta & Ors., [1996] 7 SCC 533 and followed in A.K. Soumini v.State Bank of Travancore (2003) 7 SCC 238 has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of "no work no pay". The learned Division Bench in the impugned judgment has placed reliance on the case of State of Andhra Pradesh v. K.V.L. Narasimha Rao & Ors., (1999) 4 SCC

181. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this Court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of "no work no pay" in case of retrospective promotion. Consequently, we allow this appeal and set aside the impugned order of the High Court dated 17.5.2000 passed by the Division Bench of the High Court as also the order dated 11.1.2000 passed by the Central Administrative Tribunal, Principal Bench."

The Court in the case of State of Haryana & Another vs. S.K. Khosla & Others, (2007) 15 SCC 777 held that:

"2. Heard the learned counsel for the appellants. He brought to our notice a decision of this Court in State of Haryana v. O.P. Gupta whereunder in respect of an identical matter arising out of similar proceedings of even date this Court while setting aside the decision of the High Court allowed the appeal at the instance of the State and held that in the circumstances noticed in that case which are identical as well in the cases before us, the question of payment of arrears of salary with retrospective effect from the notional dates does not arise since, indisputably the respondents had never worked during that period in the promotional post, the settled principle in such cases being, "no work, no pay". The said principle applies with equal force to the cases before us too. Applying the ratio of the said decision these appeals are also allowed and the orders of the High Court are set aside and the writ petitions before the High Court shall stand dismissed. No costs."

The following principles emerge from the aforesaid judgments:

(i) When a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom.

(ii) In case of a notional promotion with retrospective effect, in normal course the incumbent is not automatically entitled to arrears of salary as he/she has not worked in the promotional post.

(iii) The principle of "no work, no pay" is not applicable in case of retrospective promotion where the incumbent was willing to work but was denied the opportunity to work for no fault of him. For example, if the employee is kept under suspension during departmental enquiry and sealed cover procedure is adopted. In such cases if notional promotion is granted after completion of the proceeding the employee is entitled to the arrears of salary.

This principle has no application to the cases where the claims for promotion are considered in accordance with the rules and the promotions are made pursuant thereto."

10. So far as reliance placed by the counsel for the respondents on **S.K. Verma's (supra)** is concerned, even in S.K. Verma's case, Apex Court has deprecated the practice at the hands of the employer to deny backwages to an employee without recording any reasons.

11. In view of the aforesaid law, order dated 13th of August, 2015 (Annexure P-6) is hereby ordered to be quashed to the extent that the promotional benefits have been granted to the petitioner w.e.f. 18th of January, 2011 till 25th of June, 2014 only notionally. Consequent thereto, order dated 5th of October, 2015 (Annexure P-8) also cannot be sustained. The respondents having found petitioner entitled for

promotion from the back date ought not have limited the benefits for which the petitioner was entitled for the said period.

12. Resultantly, the present writ petition is allowed. Respondents are directed to release the benefits payable to the petitioner within eight weeks from the date of receipt of certified copy of this order.

February 17, 2023

Dpr

**(PANKAJ JAIN)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No